



**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:	)	
	)	
MERNA MILLER,	)	
	)	
Complainant,	)	
	)	Charge No.: 1997CF2131
and	)	EEOC No.: 21B971533
	)	ALS No.: 10290
MARTIN TITLE COMPANY,	)	
	)	
	)	
Respondent.	)	

**RECOMMENDED ORDER AND DECISION**

On December 29, 1997, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Merna Miller. That complaint alleged that Respondent, Martin Title Company, sexually harassed Complainant.

On December 20, 2000, Respondent's attorneys were given leave to withdraw. No other attorney ever entered an appearance on Respondent's behalf, and Respondent took no further actions to defend itself. As a result, on March 28, 2001, Respondent was found to be in default.

A hearing on damages was held on June 19, 2001 in Dixon, Illinois. Although notice of that hearing was sent to Respondent's last known address, Respondent did not appear at the hearing.

Subsequently, Complainant filed a written motion for

attorney's fees. That motion was served upon Respondent, but no response to the motion was filed and the time for filing such a response has passed. The matter is now ready for decision.

#### FINDINGS OF FACT

The following facts were taken from the complaint in this matter, the allegations of which are deemed to be admitted, and from the preponderance of the evidence at the damages hearing held in this matter.

1. Respondent, Martin Title Company, hired Complainant, Merna Miller, in January of 1979.

2. Complainant began as a receptionist for Respondent, but later was moved to the position of searcher.

3. Throughout her tenure with Respondent, Complainant performed her job duties in a satisfactory manner, consistent with Respondent's standards.

4. George Martin owned Respondent and ran the business.

5. Complainant once had an intimate personal relationship with Martin, but Complainant ended that relationship in or about 1982.

6. Throughout Complainant's tenure, Martin engaged in conduct of a sexual nature when he interacted with her. Martin made statements such as asking her "if it was the weather or [Complainant] making [him] so hot" and "why did you get married? You are sitting on a gold mine. Why don't you put it to good use?" That behavior increased in 1996.

7. Martin often made kissing noises toward Complainant and told her, "Our affair is not over. It will happen again."

8. Martin frequently touched Complainant without her permission.

9. Martin used to tell Complainant about his sexual activities with his girlfriend.

10. Martin's advances were unwelcome to Complainant, but he disregarded her requests that he stop.

11. Complainant was very embarrassed by Martin's behavior. She began taking medicine for a stress-related stomach problem. However, she was ashamed to tell her doctor what was happening to her at work.

12. Complainant wanted to leave her job because of Martin's behavior, but she could not find another position.

13. Complainant left Respondent's employ when she retired in May of 1999.

14. Complainant should be compensated in the amount of \$20,000.00 for the emotional distress caused by Respondent's actions.

15. Complainant is seeking compensation for the work of attorney Michael J. McCarthy at the rate of \$150.00 per hour for 18.8 hours.

16. The requested hourly rate and the requested number of hours are reasonable under these circumstances and should be accepted.

### CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" as defined by section 1-103(B) of the Illinois Human Rights Act, 775 ILCS 5.1-101 *et seq.* (hereinafter "the Act").

2. Respondent is an "employer" as defined by section 2-101(B)(1)(b) of the Act and is subject to the provisions of the Act.

3. Because it was found to be in default, Respondent has admitted the allegations of the complaint.

4. Because of its failure to file an objection to Complainant's request for attorney's fees, Respondent has waived its right to object to such fees.

### DISCUSSION

Respondent initially appeared and began to mount a defense, but its attorneys were given leave to withdraw in December of 2000. No other attorney ever entered an appearance on Respondent's behalf, and the company took no further actions to defend itself. Therefore, on March 28, 2001, Respondent was found to be in default.

As a result of the default order, Respondent is deemed to have admitted the allegations of the complaint. ***Bielecki and Illinois Family Planning Council***, 40 Ill. HRC Rep. 109 (1988). Accordingly, a finding of liability against Respondent is appropriate. A basic overview of the facts is needed, though, to allow a meaningful discussion of the appropriate damages.

Respondent, Martin Title Company, hired Complainant, Merna Miller, in January of 1979. Complainant began as a receptionist, but later was moved to the position of searcher.

George Martin owned Respondent and ran the business. Complainant once had an intimate personal relationship with Martin, but Complainant ended that relationship in or about 1982.

Throughout Complainant's tenure, Martin engaged in conduct of a sexual nature when he interacted with her. Martin made statements such as asking her "if it was the weather or [Complainant] making [him] so hot" and "why did you get married? You are sitting on a gold mine. Why don't you put it to good use?" That behavior increased in 1996.

For example, Martin often made kissing noises toward Complainant and told her, "Our affair is not over. It will happen again." He frequently touched Complainant without her permission, and he used to tell Complainant about his sexual activities with his girlfriend. Martin's advances were unwelcome to Complainant, but he disregarded her requests that he stop.

There is no doubt that Martin's improper activities had adverse effects on Complainant. She was very embarrassed by those activities. She began taking medicine for a stress-related stomach problem. However, she was ashamed to tell her doctor what was happening to her at work.

Complainant dreaded coming to work and wanted to leave her job because of Martin's behavior, but she could not find another

position. She finally left Respondent's employ when she retired in May of 1999.

The above facts are by no means complete. They are, however, representative of the behavior Complainant endured. They also provide a background against which appropriate damage awards can be measured.

Complainant was very embarrassed by Martin's harassment. In addition, there is evidence that Complainant suffered physical problems as a result of Martin's behavior. Although Complainant was ashamed to tell her doctor what was happening to her at work, she began taking medicine for a stress-related stomach problem. That combination of embarrassment and physical problems justifies an award of damages for emotional distress.

The Commission awarded \$12,000.00 in emotional distress damages on similar facts in *York and Al-Par Liquors*, \_\_\_ Ill. HRC Rep. \_\_\_, (1986CF0627, June 29, 1995). The complainant in *York* was a cashier in a convenience store. She was harassed on a daily basis by the store manager, who grabbed and touched her.

The complainant in *York* was harassed for about nine months. Complainant in the instant case was harassed for a period of years. Moreover, the *York* decision is several years old and inflation alone would justify a higher award.

It is recommended that Complainant be awarded \$20,000.00 for her emotional distress. That amount should be sufficient to compensate her for the damages she described.

There is information in the record, which indicates that Respondent is no longer doing business. Nevertheless, there are two types of relief which were not specifically requested, but which are appropriate. First, Respondent should be ordered to clear its records of any reference to this action or to the underlying charge of discrimination. Next, Respondent should be ordered to cease and desist from further sexual harassment.

Finally, there is the issue of attorney's fees. In an order entered on August 28, 2001, Complainant was given leave to file a motion for fees. She filed such a motion and served it upon Respondent. The August 28 order provided that Respondent could file a written response to the motion within 21 days of the service of the motion. The order specifically stated that failure to file a response to the motion "will be taken as evidence that Respondent does not contest the amount of such fees." Although more than 21 days have passed since Complainant filed her motion for fees, Respondent has not filed any response. As a result, Respondent has waived the issue of attorney's fees. **Mazzamuro and Titan Security, Ltd.**, \_\_\_ Ill. HRC Rep. \_\_\_, (1989CN3464, October 21, 1991). Even without that waiver, though, it would be recommended that Complainant receive the fees she has requested.

Complainant requested compensation for 18.8 hours at \$150.00 per hour. The support for the hourly rate is virtually nonexistent, but the requested rate is quite reasonable in this

forum, and it is recommended that the rate be accepted. The number of requested hours is documented and reasonable under these circumstances. The total recommended fee award is \$2,820.00. That amount should be fully compensatory.

#### RECOMMENDATION

Based upon the foregoing, it is recommended that the complaint in this matter be sustained in its entirety and that an order be entered awarding the following relief:

A. That Respondent pay to Complainant the sum of \$20,000.00 for the emotional distress suffered by Complainant as the result of Respondent's actions;

B. That Respondent pay to Complainant the sum of \$2,820.00 for attorney's fees reasonably incurred in the prosecution of this matter;

C. That Respondent clear from Complainant's personnel records all references to the filing of the underlying charge of discrimination and the subsequent disposition thereof;

D. That Respondent cease and desist from further acts of sexual harassment.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL J. EVANS  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

ENTERED: May 20, 2002